

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:21-cv-00271-MOC-WCM

ANDREW LABRECHE )

Plaintiff, )

v. )

DAVID CHAMBERS )

*Individually and in his Official Capacity,* )

TOMMY DAVIS )

*Individually and in his Official Capacity,* )

ROBERT MARTELLE )

*Individually and in his Official Capacity,* )

ELLEN SHELLEY )

*Individually and in her Official Capacity,* )

MICHELLE MCENTIRE )

*Individually and in her Official Capacity,* )

TED BELL )

*Individually and in his Official Capacity,* )

RUTHERFORD COUNTY )

SHERIFF'S OFFICE, )

CHRIS FRANCIS )

*Individually and in his Official Capacity,* )

CHAD MURRAY )

*Individually and in his Official Capacity,* )

JAMIE MODE )

*in his individual and official capacity,* )

WILMER CHAVEZ-PEREZ )

*Individually and in his Official Capacity,* )

TYLER GREENE )

*Individually and in his Official Capacity,* )

JOHN DOES 1-15 )

*in their individual and official capacities* )

Defendants. )

ORDER

This matter is before the Court on “Plaintiff Andrew LaBreche’s Response to Defendants Tommy Davis, Robert Martelle, Ellen Shelley, Michelle McEntire, and Ted Bell’s Motion for Extension of Time to Reply and/or Request for Reconsideration” (the “Motion,” Doc. 24).

On November 15, 2021, Defendants Davis, Martelle, Shelley, McEntire, and Bell (the “State Defendants”) filed a Motion to Dismiss (the “Motion to Dismiss,” Doc. 19).

On November 23, 2021, Plaintiff filed an opposition to the Motion to Dismiss. Doc. 21. Pursuant to the Local Rules, the deadline for the State Defendants to file a reply was November 30, 2021.

On November 29, 2021, the State Defendants requested a ten-day extension of that deadline. Doc. 22. The request was based on defense counsel’s obligations in other matters, as well as state, federal, and school holidays. The State Defendants represented that Plaintiff did not consent to the requested ten-day extension but had consented to a two-day extension of time.

That same day, the undersigned granted the State Defendants’ request, and extended their deadline to file a reply in support of their Motion to Dismiss through and including December 10, 2021. Doc. 23. Thereafter, Plaintiff filed the instant Motion which seeks reconsideration of the undersigned’s Order. Doc. 24.

In his Motion, Plaintiff contends that defense counsel’s busy litigation

schedule should not be a basis for an extension, and, among other things, that defense counsel has not explained why she was unable to work during holiday periods “when not spending time with family.” Doc. 24 at 4.

As the State Defendant’s request was granted, the undersigned construes Plaintiff’s Motion to be a request for reconsideration of that ruling. While the Court is, of course, authorized to reconsider its prior ruling, see Fayetteville Investors v. Commercial Builders, Inc., 936 F.2d 1462, 1469 (4th Cir. 1991) (“An interlocutory order is subject to reconsideration at any time prior to the entry of a final judgment.”), the undersigned declines to do so.<sup>1</sup>

Plaintiff’s desire for the State Defendants’ pending Motion to Dismiss and this matter to be resolved as expeditiously as possible is acknowledged but allowing the State Defendants’ requested extension under the circumstances is reasonable; even with the extension, the Motion to Dismiss will be fully briefed within less than 30 days from its filing.

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<sup>1</sup> The undersigned would have also allowed the ten-day extension if Plaintiff’s submission had been considered in the first instance as an opposition to the State Defendant’s extension request and prior to the entry of the previous Order.

Accordingly, “Plaintiff Andrew LaBreche’s Response to Defendants Tommy Davis, Robert Martelle, Ellen Shelley, Michelle McEntire, and Ted Bell’s Motion for Extension of Time to Reply and/or Request for Reconsideration” (Doc. 24) is **DENIED**.

It is so ordered.

Signed: December 1, 2021

A handwritten signature in black ink, reading "W. Carleton Metcalf", written over a horizontal line.

W. Carleton Metcalf  
United States Magistrate Judge

